

Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
Washington, D.C. 20554

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Notice of Proposed Rulemaking	)	
	)	CS Docket No. 02-52
Appropriate Regulatory Treatment for	)	
Broadband Access to the Internet Over	)	
Cable Facilities	)	
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**REPLY COMMENTS OF THE CITY OF DES MOINES, IOWA**

These reply comments are filed by the City of Des Moines, Iowa (Des Moines) in support of the comments filed by the Alliance of Local Organizations Against Preemption. Des Moines believes that (a) local communities should be able to require cable operators to obtain additional authorizations to use and occupy public rights-of-way to provide cable services, and to enforce existing authorizations that have been granted for the service; (b) should be able to obtain fair and reasonable compensation for use and occupancy of the public rights-of-way to provide non-cable services; and (c) should be able to regulate cable companies in their provision of non-cable services, as provided under the Cable Act.

**Des Moines, Iowa Experience**

Des Moines negotiated its existing cable franchise in 1998. That Franchise was originally negotiated with TCI. The Franchise was since transferred to AT&T first and most recently to Mediacom. At the time the 1998 Franchise was negotiated, *the* major concern of the City of Des Moines was to ensure that the cable system in Des Moines – throughout the city, not just a portion of the City of Des Moines – be upgraded to a system capable of providing

broadband services. This was the central issue – and point of contention. The cable operator sought to provide only a limited upgrade for a portion of Des Moines while the City – which believed it critical to have a *uniform* system capable of delivery of broadband services to *all* of its neighborhoods and citizens – sought to have a uniform level of system upgrade. The City of Des Moines determined that with the privilege of using the City’s rights-of-way – an asset belonging to all of the citizens of the city, came the duty to provide an equal level of service to all the citizens of the city. At the time the 1998 Franchise was negotiated, the City and cable operator acted under the belief there was no question that Internet cable modem service was indeed a cable service. Accordingly, Des Moines was in a position to negotiate its 1998 Franchise to provide uniform broadband service would be available throughout the City of Des Moines.

Local governments have the paramount interest to encourage maximum availability of broadband services for their citizens. Without the availability of those services, cities on a state and national basis and the neighborhoods that make up those cities on a local basis will be at a substantial competitive developmental disadvantage. It is critical that cities remain in a position to ensure that none of their citizens nor any of their neighborhoods will be bypassed by the Information Highway.

Des Moines’ 1998 Cable Franchise explicitly contemplates that franchise fees are payable on broadband services by mentioning them as an example of services within the definition of “gross revenues”. Those franchise fees have not prevented citizens from subscribing to broadband services, and the revenue generated by those franchise fees since 1999 until Mediacom withheld their payment in May 2002 are important to the City of Des Moines.

Des Moines subscribers have looked to the City as its local forum with respect to complaints and concerns regarding such services. The City has found it ironic that since the Federal Communication Commission's (FCC) declaration that cable modem service is not a "cable service" subject to local regulation, broadband subscribers have called with complaints that they were told by someone at the FCC should be addressed to the City of Des Moines.

### **Conclusion**

Des Moines supports the Comments filed herein by the Alliance of Local Organizations Against Preemption.

Respectfully submitted,

**CITY OF DES MOINES, IOWA**

*Susan A. Low*

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